IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Nand Lal Vs. State of Rajasthan

S.B.CR.REVISION PETITION NO.10/1991

against the order dt.04.1.1991 passed by Additional Sessions Judge, Rajsamand in Criminal Appeal No. 65/85.

DATE OF ORDER :: May 01, 2006

HON'BLE MR.H.R.PANWAR,J.

None present, for the petitioner.
Mr.J.P.S.Choudhary, Public Prosecutor for the State.

BY THE COURT:

This criminal revision petition under section 397/401 of the Code of Criminal Procedure, 1973 (for short `the Code` hereinafter) is directed against the judgment and order dt. 4.1.1991 passed by Additional Sessions Judge, Rajsamand (for short `the appellate court` hereinafter) in criminal appeal No.65/85 whereby the appellate court dismissed the appeal filed by the petitioner against the judgment and order dt. 30.11.1985 passed by Judicial Magistrate, Nathdwara (for short `the trial court` hereinafter) in criminal original case No.149/78 and affirmed the conviction of the petitioner for the offence under

section 408 I.P.C., however, sentenced him to undergo eight months' rigorous imprisonment and fine of Rs.3000/-, in default of payment of fine, further to undergo four months' rigorous imprisonment. Aggrieved by the judgment and order impugned, the petitioner has filed the instant revision.

The matter is on Hearing Board. On 18.8.2005, the matter came up for hearing, however, no one appeared for the petitioner. Again on 24.11.2005, 23.2.2006, 13.4.2006 and 27.4.2006, despite repeated calls, no one appeared for the petitioner. Today also, no one appears for the petitioner.

I have carefully gone through the judgments and orders of the appellate court as well as of the trial court as also the record of the trial court. I have heard learned Public Prosecutor for the State. I have also gone through the grounds taken by the petitioner in the memo of revision.

One of the grounds taken in the revision petition is that the document Ex.P/15 bears the signatures of the persons, though they stated in court that they have not been paid the amount by the present petitioner and, therefore, both the courts below fell in error in appreciating the evidence properly. In the revision, the petitioner also took a ground that both the courts below

erred in holding that the petitioner has been entrusted with the amount in question.

Learned Public Prosecutor appearing for the State submits that it was the petitioner, who on the relevant date of occurrence was the Chairman of the Co-operative Society viz. Delwara Grah Nirman Sahkari Samiti and the loans to various persons were sanctioned, however, he failed to pay certain amounts to the witnesses viz. Sohan Lal, Moolchand, Balchand, Roshanlal, Jagannath Ratanlal and Logar. According to learned Public Prosecutor, the prosecution witnesses Ratan Lal, Roshan Lal and Logar have proved that the loan amount was sanctioned in their favour varying the various amount but some of the amount was paid and remaining amount was not paid by the present petitioner and, therefore, he committed criminal breach of trust. On physical verification of the cash balance by the Co-operative Inspector, a sum of Rs.1749/- was found short and as such in all, the petitioner committed criminal breach of trust for a sum of Rs.90,149/-, which has been proved by the prosecution witnesses.

I have carefully gone through the statements of PW.6 Balchand, PW.7 Ratan Lal, PW.8 Logar as also the statement of PW.1 Sita Ram, the then Assistant Inspector, Co-operative

Society, who lodged the first information report. He has stated that as directed by the Assistant Registrar, Co-operative Society, Udaipur, Amar Singh Padiyar, Inspector, Delwara Grah Nirman Sahakari Samiti investigated the record, at the relevant time, petitioner Nand Lal Yadav was the Chairman of the said Samiti. There was allegation against the petitioner that he committed criminal breach of trust by embezzling the amount of certain members of the Society. In Delwara Grah Nirman Sahkari Samiti, there were 20 Members, in favour of whom loan was sanctioned, which was to be paid in instalments. The petitioner paid first and second instalments of loan at the rate of Rs.400/- and 800/- respectively, however, instalment of Rs.1600/- was paid to some of the persons but it was not paid to as many as seven persons named hereinabove. On physical verification of cash balance, a sum of Rs.1749/- was also found short and, therefore, the petitioner has committed criminal breach of trust of the said amount. He stated that the petitioner was entrusted with the amount which was for the instalments to be paid to twenty Members of Society, out of which he embezzled some of the amount of seven persons viz. Sohan Lal, Moolchand, Balchand, Roshan Lal, Jagannath, Ratan Lal and Logar. Before the Samiti, the petitioner himself admitted having committed criminal breach of trust and embezzled the public money being Chairman of the Co-operative Society to whom the amount was

entrusted. Vide Ex.P/5, the petitioner himself admitted that he has not paid complete loan amount to as many as 14 members of the society. He made the Panch of the Society assured to make remaining payment to all the 14 members within nine months and if he fails to do so, he is ready to bear consequences. Document Ex.P/6 was also written by the petitioner admitting his guilt regarding non-payment of complete amount to the members of the society. From the record, it appears that witness Madan Lal was paid Rs.1600/- less, Sohan Lal Rs.1650/- less, Radhey Shyam Yadav Rs.1675/- less, Logar Rs.1650/- less, Ratan Lal Rs.1650/- less, Govind Ram Rs.1600/-, Roshan Lal Rs.1900/- less, Mool Chand Rs.1296/- less, Balchand Rs.2605/- less and Jagannath Rs.1650/- less. Thus, on a close scrutiny of the record and the statements of the witnesses, it is clear that the petitioner, being the Chairman of the Co-operative Society, was entrusted with the loan amount to be paid to the various members of the society, but he did not pay complete amount, however, only part payment was made to the members and the remaining amount was embezzled by him. Both the courts below, on proper and sound appreciation of the evidence, came to the conclusion that it was the petitioner, who was entrusted with the amount, which he misappropriated for his own use. He himself admitted of having committed criminal breach of trust. The trial court convicted the petitioner for the

offence under section 408 I.P.C. and sentenced him to undergo three years' rigorous imprisonment and a fine of Rs.1000/-, in default of payment of fine, further to undergo 30 days' rigorous imprisonment. The appellate court, taking a lenient view, while maintaining the conviction, reduced the sentence of imprisonment to eight months' rigorous imprisonment and fine of Rs.3000/-, in default of payment of fine, further to undergo four months' rigorous imprisonment. The appellate court reappreciated the evidence and on sound and proper appreciation of the evidence, by a well reasoned judgment, affirmed the finding of the trial court so far as conviction is concerned. There is concurrent finding of facts holding the petitioner guilty of the offence under section 408 I.P.C.and accordingly the conviction of the petitioner has been affirmed by the appellate court. The witnesses stated that though the signatures of the Members of the Society, in whose favour the loans were sanctioned, were obtained on some documents but the complete payment was not made to them, which the petitioner himself admitted having embezzled. In the circumstances, therefore, mere signatures of the witnesses on some documents do not rescue the petitioner to say that the petitioner has paid the entire amount. In view of document Ex.P/5, in which the petitioner himself admitted that the amount of the Members of Delwara Grah Nirman Sahkari Samiti has

been used for his own, however, he agreed to return the remaining amount within nine months. In Ex.P/5, the petitioner has categorically mentioned the amount which he has not paid to the various persons.

On close scrutiny of the record, I do not find any evidence, which has not been either properly appreciated or remained to be considered by the both the courts below. In the circumstances, therefore, I do not find any error, illegality or perversity in the judgments and orders of both the courts below.

Consequently, the revision petition fails and is dismissed. The petitioner is on bail, his bail bonds stand cancelled. The petitioner shall surrender before the trial court to undergo the sentence.

[H.R.PANWAR],J.

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